



**DEPARTMENT OF FAIR EMPLOYMENT  
AND HOUSING  
*ENFORCEMENT DIVISION*  
*DIRECTIVE***

**DIRECTIVE  
NUMBER  
211**

**DISTRIBUTION  
DATE  
October 1, 1998**

1. **SUBJECT: WAIVER AGREEMENTS**
2. **PURPOSE:** To set forth the procedures for processing complaints where the complainant has signed a waiver agreement with his/her employer.
3. **BACKGROUND:** Questions often arise as to whether complainants who sign waiver agreements and General Releases with their employers have waived their right to file a Department of Fair Employment and Housing (DFEH) complaint. Sometimes these agreements have been signed as part of a separation package or as a condition of receiving separation benefits.

The Fair Employment and Housing Commission (FEHC) has not addressed the issue of whether unsupervised releases are permissible under the Fair Employment and Housing Act (FEHA). The Department has looked to federal law for guidance on this matter and has discussed the issues related to this in "Chief Counsel Opinion No. 3000." According to this Opinion, under certain circumstances such releases do validly waive the right to pursue discrimination claims, and such releases do not violate public policy. However, before accepting a written waiver, the Department has an obligation to closely scrutinize whether the unsupervised release of a discrimination claim was voluntary, deliberate, and informed. The Department will look at the totality of the circumstances and conditions under which a release is executed.

4. **PROCEDURES:**

A. **Intake:**

- 1) When a complainant presents a signed waiver agreement at intake, even one which specifically states he/she is waiving his/her right to file a complaint with DFEH or the U.S. Equal Employment Opportunity Commission (EEOC), the complaint should be accepted if it otherwise meets the criteria for acceptance of a complaint.
- 2) The intake Consultant should obtain the following information from the complainant:

- a) A description of all benefits received in exchange for signing the waiver;
  - b) The amount of time the complainant was given to consider the waiver before signing;
  - c) Whether the complainant was given the opportunity to seek legal counsel before signing;
  - d) Whether the complainant did seek legal advice before signing; and
  - e) The conditions under which the waiver was signed (e.g., whether the waiver was executed in a non-coercive atmosphere).
- 3) Once the complaint is accepted, the case should promptly be forwarded to the assigned attorney for an opinion regarding the legal sufficiency of the waiver.

**B. Investigation:**

- 1) During the investigation of a case, where the respondent presents evidence that the complainant has signed a waiver agreement, the complainant should be interviewed regarding the issues described in 4.A.2) above.
- 2) After receipt of the information from the complainant, the case should be forwarded to the assigned attorney for an opinion regarding the legal sufficiency of the waiver.

**C. Closing the Case:**

- 1) If it is determined that the complainant has validly waived his/her right to file a DFEH claim, the case will be closed, with the concurrence of the Regional Administrator, on Closing Category 14, "Administrative Dismissal."
- 2) The assigned Consultant will draft a pre-closure letter to the complainant, approved by the District Administrator, containing a brief explanation of the recommendation for closure.
- 3) The case may be closed as soon as the pre-closure letter is mailed.

**D. Investigating the Case:**

If it is determined that the case is jurisdictional, it should be investigated in accordance with existing procedures.

**5. APPROVAL:**

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Nancy C. Gutierrez, Director

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Date